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No. 1288

In the

Supreme Court of the United States

OCTOBER TERM, 1966.

LOURDESITA SOMBERO ARROYO,

Petitioner,

vs.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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The Petitioner, Lourdesita Sombero Arroyo, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit, affirming the decision and order of the District Director of the Respondent, and denying petition for review of the order of deportation entered by the Immigration and Naturalization Service, Respondent.

JUDGMENT AND OPINION OF THE COURT BELOW

The order of the District Director of the Immigration and Naturalization Service denying further time for voluntary departure is printed in the Appendix "A".

The opinion of the Court of Appeals denying the petition for review has not been officially reported, but it will be found in Appendix "B".

JURISDICTION

The judgment of the Court of Appeals sought to be reviewed was dated and entered on January 23, 1967. The mandate of the Court of Appeals was stayed for ninety days from the date of the denial of the petition for rehearing pending the filing of a petition in this court for a writ of certiorari.

Jurisdiction of this court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

1. Was the denial by the District Director of the request for additional time to depart voluntarily an abuse of discretion?

STATUTES INVOLVED

The statutes involved are: the Code of Federal Regulations, 8 C.F.R. 244.2, which states:

> "A request by an alien for an extension of time within which to depart voluntarily shall be filed with the district director having jurisdiction over the alien's place of residence. Written notice of the district director's decision shall be served upon the alien, and no appeal may be taken therefrom."

STATEMENT OF THE CASE

The petitioner is a native and citizen of the Philippine Islands. The Petitioner is a professional nurse who last entered the United States as an exchange visitor.

On to-wit: May 19, 1966, after a hearing before the Special Inquiry Officer of Respondent, the Petitioner was granted voluntary departure at her own expense and thereafter was given until July 15, 1966 to depart from the United States.

On to-wit: July 12, 1966, in writing, the Petitioner requested additional time to leave the United States so that Petitioner might make arrangements to go to a hospital in Canada, there to be a professional nurse.

Since there is a very serious shortage of professional nurses in Canada, Petitioner will be able to go there but the time required for such processing of applications sometimes takes a number of months and such arrangements are not yet complete for said Petitioner.

Respondent arbitrarily refused to grant sufficient time for such arrangements to be made and ordered the Petitioner to leave the United States on or before July 15, 1966.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

Counsel for the Petitioner is aware of the many decisions holding that as a general rule the court should not substitute their discretion for the discretion of the Attorney General.

However, the discretion of the Attorney General is not absolute or dictatorial but can be and has been overruled in cases relating to other sections of the Immigration and Nationality Act which rest upon the discretionary action of the Attorney General.

The petitioner is entitled to have the discretionary action of the Attorney General reviewed to determine if procedural due process has been granted to the alien and

if the Attorney General has abused his discretion. See *Cakmar* v. *Hoy*, 265 F. 2nd 59.

In the case of *Acosta* v. *Landon*, 125 F. Supp. 434, it was held that where the alien applied for suspension of deportation under Section 244(a) of the Immigration and Nationality Act, and showed that he had lived in the United States for forty (40) years, and other facts in support of his application, and the Special Inquiry Officer found that his deportation would not result in "exceptional and extremely unusual hardship", there had been an abuse of discretion, and that such discretion was judicially reviewable.

The Petitioner has never been arrested. She is a person of good moral character or she would not have been granted voluntary departure, since this is one of the requirements.

The fact that she overstayed her stay in the United States is conceded. However, there is no great harm to the United States by permitting the Petitioner to stay until the application of Petitioner, Lourdesita S. Arroyo, to enter Canada is processed and completed. As a matter of fact, her continued stay in the United States helps benefit the United States, by relieving the grievous shortage of professional nurses in the United States and in the Chicago area. Her departure to the Philippine Islands would be very expensive and would be nonsensical in view of the fact that she would very shortly have to make the long trip back to Canada, when her permission to enter Canada is granted.

The attention of the court is directed to the case of *Matter of F—*, 9 Int. Dec. 333. This was a decision of the Board of Immigration Appeals construing 8 C.F.R. 244.1. This is a section of the Code of Federal Regulations

which authorized voluntary departure in lieu of deportation if the alien establishes that he is willing and has "the immediate means with which to depart promptly from the United States".

This decision of the Board of Immigration Appeals, which is a precedent decision, was entered in a case where a crewman who had stayed in the United States more than the period of his "shore leave", was therefore deportable.

He asked for voluntary departure and was denied by the Special Inquiry Officer because it was held that he did not have the present ability to enter some other country.

It was shown that he had an offer of employment from a shipping line sailing out of Trinidad, if he could get to that country. The Record showed that it took several months to obtain a visa for such a crewman to enter Trinidad. The Board reversed the Special Inquiry Officer and stated:

> "It is our conclusion that the regulations regarding voluntary departure must be applied in the light of the facts of each individual case. We find that the facts here indicate distinct probability that the respondent will be able to effectuate voluntary departure within a reasonable period of time. Here we consider as important the fact that respondent and his counsel are making substantial effort to depart to some country other than Yugoslavia. *We deem it only proper that a sufficient and reasonable time be allotted respondent to conclude his arrangements.*"

It must be observed that the Respondent has failed to accord "a sufficient and reasonable time" to the petitioner to conclude her arrangements.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

NATHAN T. NOTKIN,
Attorney for Petitioners.

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APPENDIX A

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
219 South Dearborn Street
Chicago, Illinois 60604

July 14, 1966

File No. A13 416 796

Mr. Nathan T. Notkin
Attorney at Law
11 South LaSalle Street
Chicago, Illinois 60603

Dear Sir:

This is in regard to your letter of July 12, 1966 requesting a further extension of stay on behalf of Miss Lourdesita S. Arroyo.

After careful consideration I have decided that no further extension of stay will be extended to Miss Arroyo and she will be required to honor her voluntary departure.

Very truly yours,

/s/ L. W. Hurney,
L. W. Hurney,
District Director.

APPENDIX B

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

Monday, January 23, 1967

Before
Hon. WIN G. KNOCH, *Circuit Judge.*
Hon. LATHAM CASTLE, *Circuit Judge.*
Hon. LUTHER M. SWYGERT, *Circuit Judge.*

No. 15780 LOURDESITA SOMBERO ARROYO, *Petitioner,* vs. IMMIGRATION AND NATURALIZATION SERVICE, *Respondent.*	Petition for review of an order of the Immigration and Naturalization Service.

This cause came on to be heard on the petition to review an order of the Immigration and Naturalization Service and the record from the Immigration and Naturalization Service, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the decision respecting which this petition for review was filed be, and the same is hereby AFFIRMED, in accordance with the percuriam order of this Court entered this day.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago 10, Illinois 60604

January 23, 1967

Before

Hon. WIN G. KNOCH, *Circuit Judge.*
Hon. LATHAM CASTLE, *Circuit Judge.*
Hon. LUTHER M. SWYGERT, *Circuit Judge.*

No. 15780
LOURDESITA SOMBERO ARROYO, *Petitioner,*
vs.
IMMIGRATION AND NATURALIZATION SERVICE, *Respondent.*

Petition for Review of an Order of the Immigration Service under Public Law 87-301.

This Court has considered the record in this matter as transmitted to this Court from the Immigration and Naturalization Service, in addition to the briefs filed by the respective parties herein, and has heard oral argument in open court by counsel for the said parties. Having taken the case under advisement for decision, the Court has conferred thereon, and is now of the opinion, and accordingly holds and adjudges that the decision of the District Director to refuse an extension for the petitioner's departure from the United States, herein sought to be reversed, does not represent an abuse of her discretion.

Wherefore, the decision respecting which this petition for review was filed is affirmed and the Clerk of this Court is directed to enter the judgment of this Court accordingly.

In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 1288

LOURDESITA SOMBERO ARROYO, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. B) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on January 23, 1967. The petition for a writ of certiorari was filed on April 18, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the District Director abused her discretion in denying petitioner's application for an extension of time within which to depart voluntarily from the United States.

261-119—67

STATEMENT

Petitioner, a citizen of the Philippine Islands, entered the United States in March 1964 as an exchange student. She overstayed the permissible period of her visit. After a hearing, at which she was represented by counsel, she was granted voluntary departure in lieu of deportation. On May 23, 1966, petitioner was notified that she would be required to depart from the United States by June 5, 1966 (R. 7).[1] On June 7, 1966, petitioner's lawyer requested a thirty-day extension on the ground that petitioner, a professional nurse, needed more time in which to process her application to enter Canada (R. 5). On June 13, 1966, an extension was granted allowing petitioner until July 15, 1966, to leave the United States (R. 4). On July 12, petitioner's lawyer requested another thirty-day extension (R. 3), but this request was denied (R. 2). Petitioner then sought review in the court of appeals of the denial of her application for a further stay. That court upheld the District Director.

ARGUMENT

There is no substance to the present petition. The District Director could properly determine in her discretion (8 C.F.R. 244.2) that, in view of petitioner's breach of the terms of her entry and the prior granting of the privilege of voluntary departure, her

[1] "R." refers to the certified administrative record, lodged with the Clerk of this Court.

application for a further extension of time should be denied.[2] Save for the additional fact here that petitioner had already been accorded one extension of time, the present case is in all relevant respects identical to that of *Beltran* v. *Immigration and Naturalization Service*, No. 1072, this Term, certiorari denied, April 10, 1967.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.
FRED M. VINSON, JR.,
Assistant Attorney General.
BEATRICE ROSENBERG,
ROGER A. PAULEY,
Attorneys.

MAY 1967.

[2] Petitioner's reliance on *Matter of F* —, 9 I. & N. Dec. 333, is misplaced. That decision construed 8 C.F.R. 244.1 which governs the granting of the privilege of voluntary departure, relief which petitioner obtained in this case.

U.S. GOVERNMENT PRINTING OFFICE: 1967